

B.

**Texas Department of Savings and
Mortgage Lending**

Industry

and

Departmental Operations

and

Legislative Activities

B. Texas Department of Savings and Mortgage Lending

1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

The quarterly financial data as of March 31, 2012 has not been finalized by the FDIC. It will be provided at the next Finance Commission meeting.

b. Charter and Application Activity

On April 5, 2012, an application was received from Pioneer Bank, SSB, to operate a branch office in Austin, which was set for hearing and remains under review.

On April 12, 2012, an application was received from Integrity Bank, SSB, for a branch office in Pasadena, which was set for hearing and remains under review.

On April 25, 2012, an application was received from Pioneer Bank, SSB, to acquire La Grange Bancshares, Inc. and Colorado Valley Bank, ssb, through subsequent mergers, and remains under review.

On May 8, 2012, an application to convert from a federal savings bank to a state savings bank was received from Angelina Savings Bank, FSB, Lufkin, and remains under review.

On May 10, 2012, an application to convert from a national bank to a state savings bank was received from The First National Bank of Baird, Baird, and remains under review.

On May 23, 2012, an application to convert from a national bank to a state savings bank was received from First National Bank of Munday, Munday, and remains under review.

On May 23, 2012, an application to convert from a national bank to a state savings bank was received from First National Bank of the Mid-Cities, Bedford, and remains under review.

On May 23, 2012, an application to merge the proposed successor state savings banks to The First National Bank of Baird, First National Bank of Munday, and First National Bank of the Mid-Cities, was received and remains under review.

c. Wholesale Savings & Loan Charter and Application Activity

Pearl Savings Association's application was conditionally approved on March 31, 2011, and has been placed in abeyance until March 31, 2013.

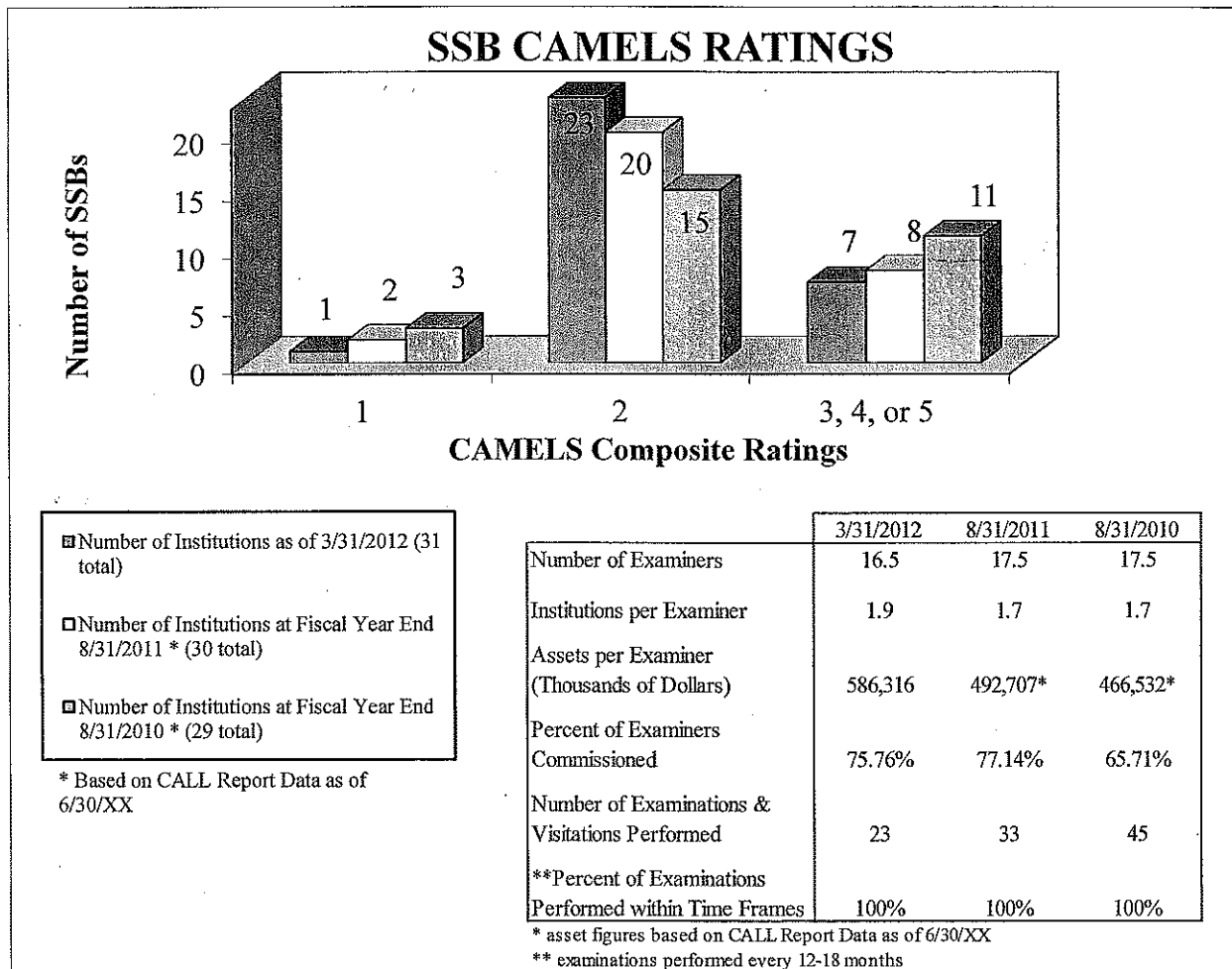
d. Recap of Problem Institutions/Enforcement Issues

As of March 31, 2012, the majority of state savings banks are rated satisfactory or better (CAMELS Composite 1 or 2). As of March 31, 2012 seven state savings banks were in the "problem

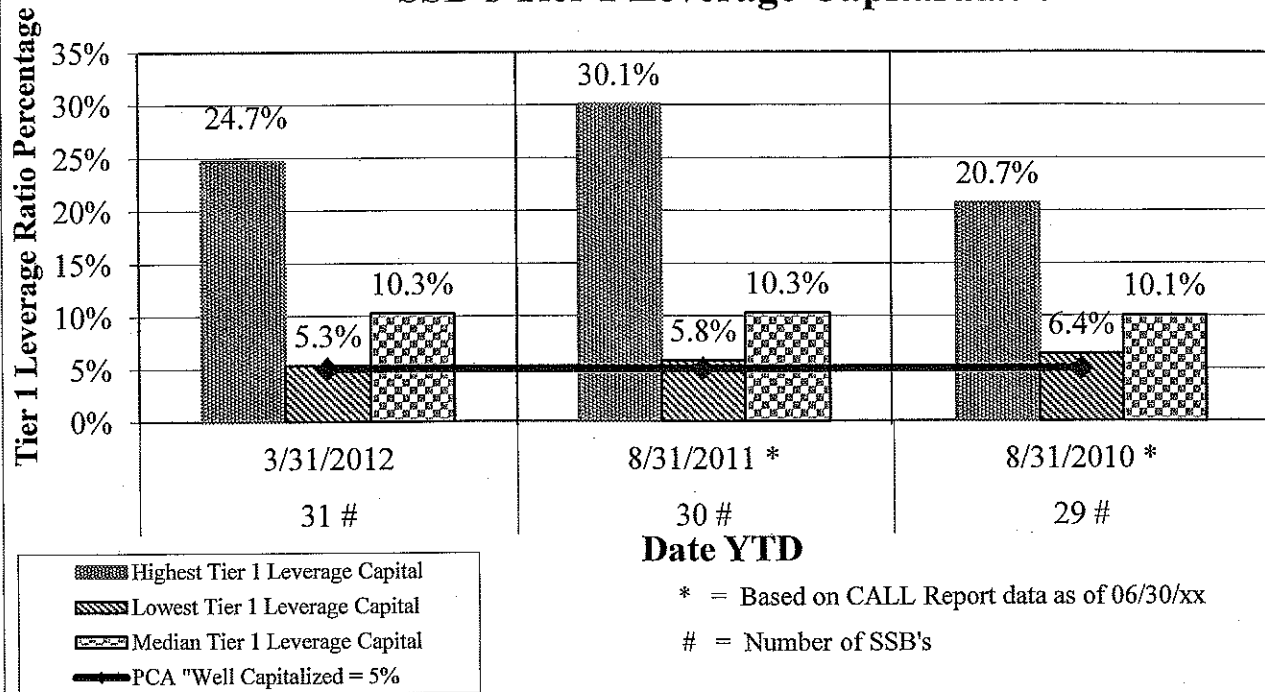
institution” category with CAMELS Composite rating of 3, 4, or 5. The progress of any “problem institution” is monitored through more frequent on-site visits and examinations and off-site review of compliance with issued and outstanding formal and informal enforcement actions, as well as the normal review processes and the use of a supervisory agent when deemed necessary.

e. Other Issues

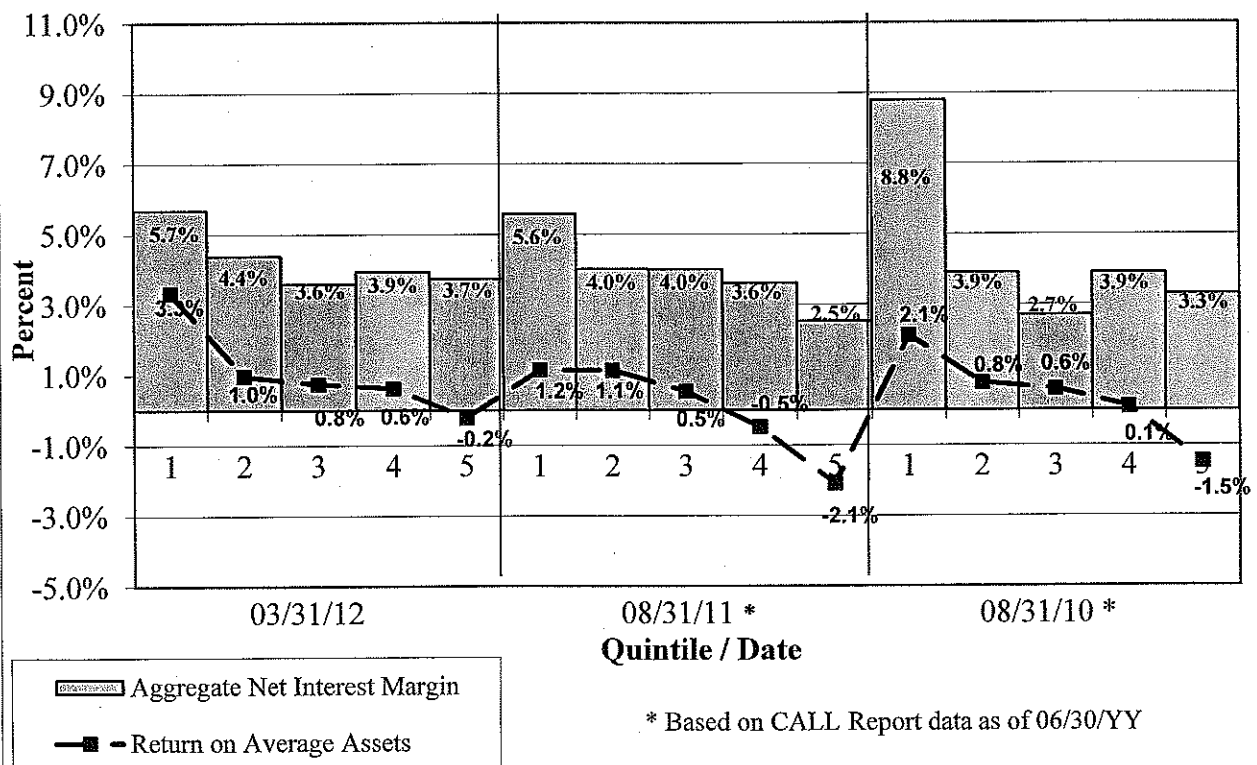
Compliance Observer Program – The Thrift Compliance Examiner attended the TBA/FDIC Compliance Symposium held May 2, 2012 in Richardson, Texas.



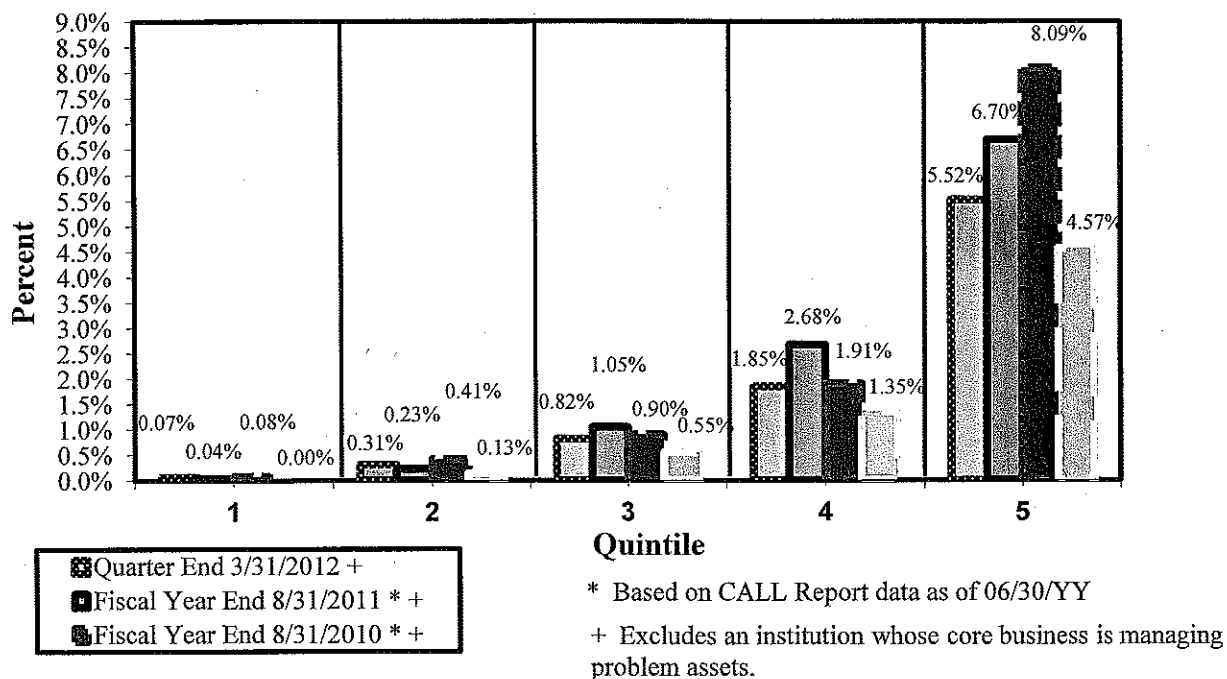
SSB's Tier 1 Leverage Capital Ratio



Aggregate Net Interest Margin / Return on Average Assets



Non-Performing Assets Plus Other Real Estate Owned to Assets



2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population

License Type As of 5/31/2012	Approved		
	Company (MU1)	Branch (MU3)	Individual (MU4)
<i>Auxiliary</i>	23	n/a	45
<i>CUSO</i>	7	1	37
<i>FSC</i>	1	n/a	476
<i>Independent Contractor</i>	57	n/a	74
<i>Mortgage Company</i>	980	267	2,830
<i>Mortgage Banker</i>	344	1,261	8,662
<i>Mortgage Servicer</i>	80	n/a	n/a
Totals	1,492	1,529	12,124

The licensing section has been extremely busy since the last Finance Commission meeting. During the months of April and May the Department received 13,617 filings. This spike in the number of filings is directly related to a form change in NMLS, which requires every licensee to amend their record. Of these filings 990 were requests for new licenses. To aid in the increased workload some examination staff have been temporarily assigned licensing duties.

Mortgage Examinations

The first round of mortgage banker examinations is continuing to progress well. The initial round of mortgage banker examinations should be completed before the end of calendar year 2012. The Department will be participating with the Consumer Financial Protection Bureau on two servicing examinations during the month of June.

Both of the Department's Supervisory Compliance Examiners will be attending FDIC asset liability school in June.

b. Consumer Complaints/Legal Issues

Consumer Complaints. The aging on consumer complaints is continuing to run under 180 days. The number of consumer complaints received during the first half of fiscal year 2012 is down approximately 25% when compared to the same period in fiscal year 2011.

Legal Issues. During the period of April 01, 2012 through May 31, 2012, the Department reports the following Enforcement Activity:

Substantive Disciplinary Cases

Notices of Hearings Issued: 21

Hearings Held: 7

Final Orders as a Result of a Hearing: 0

Agreed Orders: 19

Cease and Desist Orders: 16

Suspension Orders: 0

Orders Lifting Suspension: 1

Appeals of License Denials

Notices of Hearings Issued: 5

Appeals Received: 7

Hearings Held: 1

Final Orders as a Result of a Hearing: 1

Dismissal Orders: 3

Agreed Orders: 0

Annual Report Appeals

Notices of Hearings Issued: 0

Hearings Held: 0

Final Orders as a Result of a Hearing: 0

Orders Lifting Suspension: 0

Non-Sufficient Funds (NSF)

Orders Issued: 0

Letters Issued: 0

Other Non-Substantive Orders (e.g. Notice of Violation, Take Affirmative Action, Assessing Admin. Penalty, etc.)

Other Non-Substantive Orders Issued: 25

Recovery Fund

Notices of Hearings Issued: 1

Hearings Held: 1

Final Orders as a Result of a Hearing: 0

Collection Cases Referred to the Attorney General

Collection Cases Referred to the Attorney General: 0

There were no Recovery Fund claims paid during the period 4/01/2012 – 5/31/2012.

c. Other Issues

None.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is working on closing out the third quarter of FY12. Preparation of the proposed budget for FY13 has begun.

b. Staffing

As of March 31, 2012, the agency was staffed at 61 regular full time employees and 1 regular part-time employee with 65 FTEs available.

Currently, there are no job openings posted on the Department's website.

c. Other Issues

None

4. Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC Chapter 80 as found in §§80.8 - 80.23 and §§80.301 - 80.307.

PURPOSE: The purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The Department received no comments on the proposed repeal.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the repeal of Chapter 80, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the repeal of Chapter 80, as published in the *Texas Register*.

TITLE 7. Banking and Securities
Part 4, Texas Department of Savings and
Mortgage Lending
Chapter 80 Texas Residential Mortgage Loan
Originator Regulations
§§80.8 - 80.23 and §§80.301 - 80.307

The Finance Commission of Texas (the Commission) adopts the repeal of 7 TAC Chapter 80, Subchapter B (§§80.8 - 80.11), relating to Professional Conduct; Subchapter C (§§80.12 - 80.14), relating to Administration and Records; Subchapter D (§80.15), relating to Complaints and Investigations; Subchapter E (§80.16), relating to Hearings and Appeals; Subchapter F (§80.17), relating to Interpretations; Subchapter G (§80.18), relating to Enforcement of Liens; Subchapter H (§80.19), relating to Savings Clause; Subchapter I (§80.20 and §80.21), relating to Inspections and Investigations; Subchapter J (§80.22), relating to Forms; Subchapter K (§80.23), relating to Mortgage Call Reports; and Subchapter L (§§80.301 - 80.307), relating to Licensing in conjunction with the Commission's review of Chapter 80. The repeal is adopted without changes to the text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3298).

In general, the purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The 30 day comment period ended June 4, 2012, during which no comments were received on the proposed repeal.

The repeal of 7 TAC Chapter 80 is adopted under Texas Finance Code §§11.306 and 156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

Subchapter B Professional Conduct

- ~~§80.8 Limitations on Charging of Fees~~
- ~~§80.9 Required Disclosures~~
- ~~§80.10 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings~~
- ~~§80.11 Advertising~~

Subchapter C Administration and Records

- ~~§80.12 License Record Changes~~
- ~~§80.13 Books and Records~~
- ~~§80.14 Education Program~~

Subchapter D Complaints and Investigations

- ~~§80.15 Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions~~

Subchapter E Hearings and Appeals

- ~~§80.16 Hearings and appeals~~

Subchapter F Interpretations

- ~~§80.17 Interpretations~~

Subchapter G Enforcement of Liens

- ~~§80.18 Enforceability of Liens~~

Subchapter H Savings Clause

- ~~§80.19 Savings Clause~~

Subchapter I Inspections and Investigations

- ~~§80.20 Examinations~~
- ~~§80.21 Investigations~~

Subchapter J Forms

- ~~§80.22 Loan Status Forms~~

Subchapter K Mortgage Call Reports

- ~~§80.23 Mortgage Call Reports~~

Subchapter L Licensing

- ~~§80.301 Scope~~
- ~~§80.302 Definitions~~
- ~~§80.303 Licensing General~~
- ~~§80.304 Qualifications for Obtaining Licenses~~
- ~~§80.305 Renewals~~
- ~~§80.306 Sponsorship and Termination Thereof~~
- ~~§80.307. Background Checks~~

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage
Lending

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5. Discussion of and Possible Vote to Take Action on the Adoption of new 7 TAC Chapter 80, Subchapter A, §§80.1 - 80.5, Subchapter B, §§80.100 - 80.107, Subchapter C, §§80.200 - 80.205, and Subchapter D, §§80.300 - 80.302, concerning Texas Residential Mortgage Loan Originator Regulations.

PURPOSE: The purpose of the adoption of new Chapter 80 is to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the new rules, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC Chapter 80, as published in the *Texas Register*.

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 80 Texas Residential Mortgage Loan Originator Regulations

Proposed Adoption of new 7 TAC Chapter 80 Texas Residential Mortgage Loan Originator Regulations as found in the following new sections: 7 TAC Chapter 80 concerning Subchapter A General Provisions, including §80.1, concerning Scope; §80.2, concerning Definitions; §80.3, concerning Interpretations; §80.4, concerning Enforceability of Liens; and §80.5, concerning Savings Clause; Subchapter B, concerning Licensing, including §80.100, concerning Licensing-General; §80.101, concerning, Education Program; §80.102, concerning Sponsorship and Termination Thereof; §80.103, concerning License Record Changes; §80.104, concerning Background Checks; §80.105, concerning Request for Criminal History Eligibility Determination; §80.106, concerning Renewals; and §80.107, concerning Fees; Subchapter C, concerning Duties and Responsibilities, including, §80.200, concerning Required Disclosures; §80.201, concerning Loan Status Forms; §80.202, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §80.203, concerning Advertising; §80.204, concerning Books and Records; and §80.205, concerning Mortgage Call Reports; and Subchapter D, concerning Compliance and Enforcement, including §80.300, concerning Examinations; §80.301, concerning Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions; and §80.302, concerning Hearings and Appeals.

The purpose of the adoption of new Chapter 80 is to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

The Department received no comments regarding the proposed new rules.

The new rules are adopted under Texas Finance Code §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 156.

Title 7. Banking And Securities

Part 4. Texas Department of Savings And Mortgage Lending

Chapter 80 Texas Residential Mortgage Loan Originator Regulations

SUBCHAPTER A. General Provisions

§80.1. Scope.

This chapter governs the licensing, registration and conduct of Residential Mortgage Loan Originators, Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters under Finance Code, Chapter 156 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

§80.2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

(1) "Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which conducts mortgage business on

residential real estate located in the state of Texas.

(2) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(3) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(4) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

(5) "Dwelling" has the meaning assigned by §103(v) of the Truth in Lending Act (15 U.S.C. §1602(v)).

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

(7) "Originator" means, for purposes of this chapter, a residential mortgage loan originator, as that term is defined in Finance Code, §180.002.

(8) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walkup traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(9) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated

activities, and is sponsored by the company for which they are the qualifying individual.

(10) "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§80.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 156 will be construed and implemented the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 156 and this chapter.

§80.4. Enforceability of Liens.

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

§80.5. Savings Clause.

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder hereof, all of which shall remain in full force and effect.

SUBCHAPTER B. Licensing

§80.100. Licensing - General.

(a) A person is required to be licensed under Finance Code, Chapter 156 if the person:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(d) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(f) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(g) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance

of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 156 have been met.

§80.101. Education Program.

Pre-licensing and continuing education courses required under Finance Code, Chapter 156 and Chapter 180 shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

§80.102. Sponsorship and Termination Thereof.

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by any company employing the originator.

(b) By sponsoring an originator, a company acknowledges and accepts responsibility for the actions of the originator pursuant to Finance Code, Chapter 156.

(c) Sponsorship may be removed by either the sponsoring company or the sponsored originator. If sponsorship is terminated the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has terminated.

§80.103. License Record Changes.

(a) Each originator's application for a license under Finance Code, Chapter 156 requires the applicant to indicate the location(s) at which he or she proposes to conduct licensed activity. Proper sponsorship and disclosure of each location is required on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

(1) any change of address;

(2) personal name change; or

(3) a new, or changed company, organization, or assumed name.

§80.104. Background Checks.

(a) In connection with each application for an originator's license, the applicant shall provide authorization and fingerprints as prescribed by the Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for an originator's license, the Commissioner may conduct a criminal background history check through the Texas Department of Public Safety.

(c) In connection with each application for the issuance of an originator's license, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) In connection with each application for the issuance of an originator's license, the applicant shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

§80.105. Request for Criminal History Eligibility Determination.

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

§80.106. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §156.208.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine compliance with the requirements of Finance Code, Chapter 156.

§80.107. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 156. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

SUBCHAPTER C. Duties and Responsibilities

§80.200. Required Disclosures.

(a) An originator shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

"CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

§80.201. Loan Status Forms.

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Figure: 7 TAC §80.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

Figure: 7 TAC §80.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(l).

§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) No company or originator may:

(1) knowingly misrepresent his or her relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the company or originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a mortgage applicant

on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statutory regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §156.303(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202;
and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the company or originator is a "discount point" unless the loan closes and:

(A) The company or originator is the lender in the transaction. For purposes of this paragraph, the company or originator is deemed to be the lender if the company or originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The company or originator, is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the company or originator has remitted to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:

(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or

(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.

(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§80.203. Advertising.

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsection (c) of this section, if the person who caused the advertisement to be published is an originator the advertisement shall contain:

(A) the name of the originator followed by the phrase "Residential Mortgage Loan Originator";

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number;

(C) the name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and

(D) the company's physical office or branch office street address in Texas.

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the company or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§80.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each company or originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records

maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet; if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage brokerage business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§80.205. Mortgage Call Reports.

(a) Call Report.

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed

by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report can result in an administrative penalty for each missed or late filing.

SUBCHAPTER D. Compliance and Enforcement

§80.300. Examinations.

(a) The Commissioner, operating through the department staff and such others as the Commissioner may from time to time designate, will conduct periodic examinations of a company or an originator as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the qualifying individual of the company advance

notice of each examination. Such notice will be sent to the qualifying individual's address of record or e-mail address on file with the department and will specify the date on which the department's examiners are scheduled to begin the examination. Failure of the qualifying individual to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the qualifying individual should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §80.204 of this chapter;

(4) Legal and regulatory requirements applicable to licensees are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the company's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require a company or an originator at their own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of a company or an originator to cooperate with an examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the company or originator to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of a company or an originator because the required records are maintained at a location outside of the state, the company or originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

§80.301. Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined in Finance Code, §180.002(14) required to be licensed under Finance Code, Chapter 156, the Commissioner or the Commissioner's designee will make an initial determination whether the

complaint sets forth reasonable cause to warrant an investigation:

(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the

Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the

Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

§80.302. Hearings and Appeals.

(a) Hearings are to be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings shall, unless specifically authorized by

the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

Certification

The agency hereby certifies that the new rules have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Caroline C. Jones
General Counsel
Department of Savings and Mortgage Lending

6. Discussion of and Possible Vote to Take Action on the Adoption of the Repeal of 7 TAC Chapter 81 as found in §§81.1 - 81.20.

PURPOSE: The purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The Department received no comments on the proposed repeal.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the repeal of Chapter 81, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the repeal of Chapter 81, as published in the *Texas Register*.

TITLE 7. Banking and Securities

Part 4, Texas Department of Savings and Mortgage Lending

Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Officer Licensing
§§81.1 - 81.20

The Finance Commission of Texas (the Commission) adopts the repeal of 7 TAC Chapter 81, Subchapter A (§§81.1 - 81.6), relating to Licensing; Subchapter B (§§81.7 - 81.9), relating to Professional Conduct; Subchapter C (§81.10), relating to Administration and Records; Subchapter D (§81.11), relating to Complaints and Investigations; Subchapter E (§81.12 and §81.13), relating to Examinations and Investigations; Subchapter F (§81.14), relating to Hearings and Appeals; Subchapter G (§81.15), relating to Mortgage Call Reports; Subchapter H (§81.16), relating to Recovery Fund; Subchapter I (§81.17), relating to Interpretations; Subchapter J (§81.18), relating to Enforcement of Liens; Subchapter K (§81.19), relating to Savings Clause; and Subchapter L (§81.20), relating to Sponsorship and Termination Thereof in conjunction with the Commission's review of Chapter 81. The repeal is adopted without changes to the text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3301).

In general, the purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The 30 day comment period ended June 4, 2012, during which no comments were received on the proposed repeal.

The repeal of 7 TAC Chapter 81 is adopted under Texas Finance Code §157.011, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules

necessary to enforce Texas Finance Code, Chapter 157.

Subchapter A. Licensing

~~§81.1. Definitions.~~

~~§81.2. Loan Status Forms.~~

~~§81.3. Licensing General.~~

~~§81.4. Qualifications for Obtaining Licenses.~~

~~§81.5. Renewals.~~

~~§81.6. Criminal History.~~

Subchapter B. Professional Conduct

~~§81.7. Required Disclosures~~

~~§81.8. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings~~

~~§81.9. Advertising.~~

Subchapter C. Administration and Records

~~§81.10. Books and Records.~~

Subchapter D. Complaints and Investigations

~~§81.11. Complaints and Investigations.~~

Subchapter E. Examinations and Investigations

~~§81.12. Examinations.~~

~~§81.13. Investigations.~~

Subchapter F. Hearings and Appeals

~~§81.14. Hearings and Appeals.~~

Subchapter G. Mortgage Call Reports

~~§81.15. Mortgage Call Reports.~~

Subchapter H. Recovery Fund

~~§81.16. Recovery Fund.~~

Subchapter I. Interpretations

~~§81.17. Interpretations~~

Subchapter J. Enforcement Of Liens

~~§81.18. Enforceability of Liens~~

Subchapter K. Savings Clause

~~§81.19. Savings Clause.~~

**~~Subchapter L. Sponsorship And Termination
Thereof~~**

~~§81.20. Sponsorship and Termination Thereof~~
Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage
Lending

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7. Discussion of and Possible Vote to Take Action on the Adoption of new 7 TAC Chapter 81, Subchapter A, §§81.1 - 81.5, Subchapter B, §§81.100 - 81.105, Subchapter C, §§81.200 - 81.205, and Subchapter D, §§81.300 - 81.302, concerning Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing.

PURPOSE: The purpose of the adoption of new Chapter 81 is to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the new rules, as published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC Chapter 81, as published in the *Texas Register*.

TITLE 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending.

Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing

Proposed Adoption of new 7 TAC Chapter 81 Chapter 81 concerning Subchapter A General Provisions, including §81.1, concerning Scope; §81.2, concerning Definitions; §81.3, concerning Interpretations; §81.4, concerning Enforceability of Liens; and §81.5, concerning Savings Clause; Subchapter B, concerning Licensing, including §81.100, concerning Licensing-General; §81.101, concerning, Sponsorship and Termination Thereof; §81.102, concerning Recovery Fund; §81.103, concerning Request for Criminal History Eligibility Determination; §81.104, concerning Renewals; and §81.105, concerning Fees; Subchapter C, concerning Duties and Responsibilities, including, §81.200, concerning Required Disclosures; §81.201, concerning Loan Status Forms; §81.202, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §81.203, concerning Advertising; §81.204, concerning Books and Records; and §81.205, concerning Mortgage Call Reports; and Subchapter D, concerning Compliance and Enforcement, including §81.300, concerning Examinations; §81.301, concerning Complaints and Investigations; and §81.302, concerning Hearings and Appeals.

The purpose of the adoption of new Chapter 81 is to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

The Department received no comments regarding the proposed new rules.

The new rules are adopted under Texas Finance Code §157.011, which authorize the Finance

Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

Title 7. Banking And Securities

Part 4. Texas Department of Savings And Mortgage Lending

Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing

SUBCHAPTER A. General Provisions

§81.1. Scope.

This chapter governs the licensing, registration and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

§81.2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(2) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(3) "Department" means the Texas Department of Savings and Mortgage Lending.

(4) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(5) "Originator" means, for purposes of this chapter, a Residential Mortgage Loan Originator, as that term is defined in Finance Code, §180.002.

(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§81.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 157 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and this chapter.

§81.4. Enforceability of Liens.

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

§81.5. Savings Clause.

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder thereof, all of which shall remain in full force and effect.

SUBCHAPTER B. Licensing

§81.100. Licensing - General.

(a) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(b) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon

submission and approval of a sponsorship, the license may be changed to active status.

(c) An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term. While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(7) of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to an active status.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to Finance Code, Chapter 157 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 157 have been met and maintained.

(e) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(f) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

§81.101. Sponsorship and Termination Thereof.

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by a mortgage banker.

(b) Sponsorship may be removed by either the sponsoring mortgage banker or the originator. If sponsorship is terminated, the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has been terminated.

§81.102. Recovery Fund.

(a) A designated portion of the originator's license and renewal fees, as determined by the Commissioner, shall be allocated to the Recovery Fund for the purpose of compliance with Finance Code, Chapter 180.

(b) Administration of the Recovery Fund and any claims to the Recovery Fund against an originator shall be in accordance with the provisions of Finance Code, Chapter 156, Subchapter F.

§81.103. Request for Criminal History Eligibility Determination.

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

§81.104. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §157.015.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

§81.105. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

SUBCHAPTER C. Duties and Responsibilities

§81.200. Required Disclosures.

(a) An originator shall include the following notice, Figure: 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §81.200(a)

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice:

"CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website.

§81.201. Loan Status Forms.

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Figure: 7 TAC §81.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

Figure: 7 TAC §81.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(l).

§81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) No originator may:

(1) knowingly misrepresent his or her relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a residential mortgage loan

applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202;
and

(G) Texas Constitution, Article XVI, §50.

(c) A mortgage banker or originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false

misleading or deceptive practice in the related transaction; or

(2) The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or

(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§81.203. Advertising.

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually

available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsection (c) of this section, the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement;

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and does not contain any contact information, such as the inscription of the name

on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§81.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.007 and §81.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable.

(2) Mortgage Transaction Log. A residential mortgage transaction log, maintained on a current basis, which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred, setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a residential mortgage loan applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records shall remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Upon the termination of operations as a mortgage banker or an originator, the mortgage banker or originator shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report can result in an administrative penalty for each missed or late filing.

SUBCHAPTER D. Compliance and Enforcement

§81.300. Examinations.

(a) The Commissioner, operating through the department staff and such others as the Commissioner may, from time to time, designate will conduct periodic examinations of an originator sponsored by mortgage bankers as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the mortgage banker advance notice of each examination. Such notice will be sent to the contact person's address of record or e-mail address on file with the department and will specify the date on which the department's examiners will commence the examination. Failure of the mortgage banker to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage banker should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 157 and this chapter. The examination will specifically address whether:

(1) All persons conducting residential mortgage loan activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §81.204 of this chapter;

(4) Legal and regulatory requirements applicable to originators or the originator's residential mortgage business are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 157.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the originator's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of an originator to cooperate with the examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the originator and any mortgage banker employer to enforcement

actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of an originator, because that originator maintains required records at a location outside of the state, the originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

§81.301. Complaints and Investigations.

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined under Finance Code, §180.002(14) required to be licensed or a mortgage banker required to be registered under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(1) If it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or

federal regulatory, enforcement, or oversight bodies;

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) If determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.

§81.302. Hearings and Appeals.

(a) Hearings are to be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of

appeal, and applications for review. All such hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

Certification

The agency hereby certifies that the new rules have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Caroline C. Jones
General Counsel
Department of Savings and Mortgage Lending

8. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:

a. Anticipated Litigation
None.

b. Pending Litigation
None